Supreme Court of the United States.

No. 48.—October Term, 1903.

Toltec Ranch Company, Plaintiff in Error,
vs.
George Cook, S. N. Cook, Alfred Ward, George Ward, G. J. Wells, C. F. Wells, Joseph Dudley, and Charles Dudley.

In error to the Supreme Court of the State of Utah.

[December 21, 1903.]

The Toltec Ranch Company, a California corporation, brought this action in 1901 in the District Court of the First Judicial District, Box Elder County, State of Utah, to quiet title to the S.E. ¼ of the S.E. ¼ of section 27, township 8, north of range 2 west, Salt Lake meridian, United States survey. Title in fee was alleged. The defendants answered separately, claiming different portions of the land, and each alleged peaceable, continuous and adverse possession under claim of title in himself and grantors adversely to the plaintiff for more than thirty years, and that plaintiff's cause was "barred by the statute of limitations as provided by sections 2856 and 2872, inclusive, of the Revised Statutes of Utah." Under these sections to constitute a bar there must be an adverse holding for at least seven years.

The title of plaintiff, it was admitted, was derived as follows: Patent from the United States dated January 20, 1900, to the Central Pacific Railroad Company; the railroad company by deed dated October 17, 1895, to D. P. Tarpey; the latter and wife to M. F. Tarpey by deed December 8, 1895; M. F. Tarpey to plaintiff, October 17, 1896. The patent to the company was issued in pursuance of the grant to the company made by the act of Congress approved July 1, 1862, as amended by the act of July 2, 1864, to aid in the construction of a railroad and telegraph line from the Missouri to the Pacific Ocean. (12 Stat. 489; 13 Stat. 356.)

It was admitted that the land in controversy was within the ten-mile limit of the grant to the company, and that the map of location of the railroad was filed in the office of the Secretary of the Interior on the 20th of October, 1868.

It was also admitted that no claim of any right or title to or in the right of way of the railroad company across the lands in controversy was made by any or either of the defendants.

The defendants introduced evidence to sustain the averments of their answers.

The case was submitted to a jury on special interrogatories, and the jury found that the defendants had been in possession of the land claimed by them, either by themselves or their predecessors and grantors, from some time in 1868 to the commencement of the action. The jury also returned the following verdict: "We, the jury empanelled in the above-entitled cause, find the issues joined herein in favor of the said defendants and against the plaintiff, no cause of action." Judgment was entered upon the verdict. It was affirmed by the Supreme Court of the State. The court said, after discussing questions with which we are not concerned:

"The next question for consideration is whether the statute of limitations can prevail as a bar to the action when it appears that the patent of the United States Government was not issued to the plaintiff until January 20, 1900."

The question was answered in the affirmative. The chief justice of the State granted this writ of error.

Mr. Justice McKenna, after stating the case as above, delivered the opinion of the Court.

The case is in narrow compass. The question presented is whether adverse possession under claim of right for the period prescribed by the statute of limitations of Utah before patent was issued by the United States can prevail against the latter. It has been decided by this court that adverse possession of land gives title to it and all of the remedies which attach to the title. This was expressly ruled in *Sharon* v. *Tucker*, (144 U. S. 533.) The suit was a bill in equity to establish as matter of record a title acquired by adverse possession, and it was brought against those who but for such acquisition would have been the owners. Mr. Justice Field, speaking for the court, said:

"It is now well settled that by adverse possession for the period designated by the statute, not only is the remedy of the former owner gone, but his title has passed to the occupant, so that the latter can maintain ejectment for the possession against such former owner should he intrude upon the premises. In several of the States this doctrine has become a positive rule, by their statutes of limitations declaring that uninterrupted possession for the period designated to bar an action for the recovery of land shall of itself constitute a complete title. (*Leffingwell* v. *Warren*, 2 Black, 559; *Campbell* v. *Holt*, 115 U. S. 620, 623.)" See also *Shelley* v. *Guy*, (11 Wheat. 361.)

Adverse possession, therefore, may be said to transfer the title as effectually as a conveyance from the owner; it may be considered as tantamount to a conveyance. And the Central Pacific Railroad Company had the title. (*Salt Co.* v. *Tarpey*, 142 U. S. 241.) It would seem, therefore, an irresistible conclusion that it could have been transferred by any of the

means which the law provided. It is, however, contended otherwise, and *Ankeny* v. *Clark*, (148 U. S. 345;) *Barden* v. *Northern Pacific R. R. Co.*, (154 U. S. 288,) and *Nelson* v. *Northern Pacific R. R. Co.*, (188 U. S. 108,) are urged to support the contention. A comparison of those cases with *Salt Co.* v. *Tarpey* becomes necessary.

Salt Co. v. *Tarpey* was an action of ejectment. Tarpey was the plaintiff in the trial court. He relied for his title upon a lease from the Central Pacific Railroad Company, and it became necessary to consider the nature of the Congressional grant to that company. The issue made was direct and unmistakable, and the decision was equally so. The plaintiff contended that the grant vested in the company the *legal title*. It was asserted on the other hand that the title to the land was retained until the cost of selecting, surveying and conveying all the granted lands was paid, and, also, that by other provisions of the granting act the title remained in the government until patent issued. Both contentions were rejected. The court said that the terms of the grant "import the transfer of a present title, not one to be made in the future. They are 'there be and is hereby granted' to the company every alternate section of the lands. No partial or limited interest is designated, but the lands themselves are granted, as they are described by the sections mentioned. Whatever interest the United States possessed in the lands was covered by those terms, unless they were qualified by subsequent provisions, a position to be presently considered." Those provisions were considered, and it was determined that they did not qualify the terms of the grant conveying the title or essentially limit them. Anticipating the question that if such be the import of the act, what was the necessity of patents, it was said, there were many reasons why the issue of patents would be of great service to the patentees. "While not essential to transfer the legal right the patent would be evidence that the grantee had complied with the conditions of the grant, and to that extent the grant was relieved from the possibility of forfeiture for breach of its conditions, . . . they would thus be in the grantee's hands deeds of further assurance of his title, and therefore a source of quiet and peace to him in his possession." And the conclusion was that "the title transferred was a legal title, as distinguished from an equitable and inchoate interest." The distinction expressed the completeness of the title conveyed.

Ankeny v. *Clark* was an action for the recovery of the value of 12,767 bushels of wheat, which had been delivered by Clark to Ankeny in pursuance of a contract by which Ankeny agreed to sell and deliver to Clark two sections of land in Walla Walla County, in what was then the Territory of Washington. After the delivery of the wheat Clark demanded a deed for the land. Ankeny, after some delay on one pretext or another, informed Clark that he could have a warranty deed to a part of the land,

and a quitclaim deed to the part which was called railroad land, and informed him, as to the latter part, that if the Northern Pacific Railroad Company could not get title he would be obliged to procure title from the government. Ankeny promised to pay the necessary expenses of obtaining title in that way. Clark refused the offer and gave notice that, unless a good title was conveyed to him for the whole of the land within five days, he would abandon possession and claim compensation for the violation of the contract. Ankeny paid no attention to the notice, and Clark brought suit for the value of the wheat and recovered. The case came to this court from the Supreme Court of the Territory. In passing on the case this court said there were three principal matters of contention in the trial court. We are concerned with only one of them, and that is, "Did Ankeny have good title to the northeast quarter of section 19, being part and parcel of the lands which he agreed to sell to Clark?" Clark asserted the negative of the question; Ankeny contended for the affirmative, and cited *Salt Co.* v. *Tarpey.* The court did not find it necessary to decide the issue thus accurately presented. It followed *Salt Co.* v. *Tarpey,* to the effect that the government could enforce the payment of the costs and could withhold the patents until they were paid, and this, it was said, "gave the government a lien for said costs." And it was hence held that Ankeny "did not hold such title as it was obligatory on the plaintiff (Clark) to accept." But *Salt Co.* v. *Tarpey* was not questioned. It was only decided that the land was subject to a lien and, so burdened, Clark was not compelled to receive it.

Barden v. *Northern Pacific R. R. Co.,* (154 U. S. 288,) was an action by the railroad company for the recovery of certain lands containing veins or lodes of rock in place bearing gold, silver and other precious metals. The plaintiff relied for title upon its grant. The defendant contended that the lands were excepted by express words from the grant. This contention was sustained. It is manifest, therefore, that the case in no way militates with the decision in *Salt Co.* v. *Tarpey,* and the court said so. Mr. Justice Field was the organ of the court in both cases, and he expressed the inapplicability of the Tarpey case and left in unimpaired. What was there said was affirmed, that the title passed at the date of the grant. Of what lands? Of those, it was held, which were not reserved as mineral. In other words, mineral lands were not conveyed, whether known or unknown to be such at the time of the grant. This was the main question decided. It was also held that the issue of patent would constitute a determination of the character of the land by reason of the power of the Land Department to determine and establish it. But it was not intimated, nor does it follow, that the conveyance of the title to the company was by the patent and not by the granting act. There was, therefore, nothing decided which detracts from *Salt Co.* v. *Tarpey.*

Nelson v. *Northern Pacific Railway* was an action brought by the railway company to recover the possession of a quarter section of land claimed to be within the land grant of Northern Pacific Railroad, and the company held a patent. Nelson claimed to have settled upon the land three years before the definite location of the road. He claimed, therefore, to be within the exceptions of the grant. The land when he settled upon it was unsurveyed, and the effect of this constituted one of the questions in the case. Upon the filing of a map by the railroad company of its general route, an order was made by the Land Department withdrawing from settlement the lands within the limits of the grant. The effect of this order was another question in the case. It was held "that the railroad company did not acquire any vested interest in the land in dispute in virtue of its map of general route or the withdrawal order based on such map," and it was further held that Nelson's settlement upon and occupancy of the land was valid, and constituted a claim upon the land within the meaning of the Northern Pacific act of 1864. In other words, it was held that the land was excluded from the grant by express words. The operative words which produced that effect were expressed in the following provision of section 3 of the act: "And wherever prior to said time [of definite location] *any* of said sections, or parts of sections, shall have been granted, sold reserved, *occupied by homestead settlers*, or pre-empted, or otherwise disposed of, *other lands* shall *be selected* by said *company in lieu* thereof," &c. This view was established in an elaborate opinion. The case, therefore, like *Barden* v. *Northern Pacific R. R.*, decided only that lands did not pass by the grant which were reserved from it. An evident proposition, whatever might have been the difficulties in determining what lands were reserved. And there were difficulties. This court in consequence divided in opinion. But those difficulties do not confront us in the case at bar. They are settled, and in their settlement no doubts were cast upon the efficacy of the grants to convey title to all the lands they covered—to all that was not reserved from them.

Judgment affirmed.

Mr. Justice BREWER concurs in the judgment.

True copy.

Test:

Clerk Supreme Court, U. S.